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AN E&E NEWS PUBLICATION

NATIONAL MONUMENTS

Utah land swaps could foil a Trump bid to strip protection

Jennifer Yachnin, E&E News reporter

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Grand Staircase-Escalante National Monument in southern Utah. Photo courtesy of the Bureau of Land Management.

If the latest partisan battle over the fate of national monuments feels a bit like déjà vu, there's a good reason for that.

A Democratic commander-in-chief used the Antiquities Act to protect a large swath of land, and a new Republican administration called for a review of recently designated monuments. Congress raised the specter of curtailing the 1906 law that allows presidents to declare such sites, and a legal battle royal loomed.

That was two decades ago.

But President Trump's executive order last week mandating a review of dozens of sites created by his predecessors doesn't just raise a series of striking parallels. In at least one case, it actually is the same monument back on the chopping block: Grand Staircase-Escalante National Monument, which includes 1.87 million acres of southern Utah desert.

And those past disputes — and the resulting covenants — over that monument could complicate the Trump administration's hopes for making any new changes via executive fiat.

"It's hard to un-ring the bell," said Conservation Lands Foundation acting Executive Director John Wallin.

The Utah monument has served as a flashpoint in the debate over control of public lands for more than 20 years following President Clinton's designation of the site in late 1996.

The Clinton administration's decision to protect the site was made in near-total secrecy, at least in part to lock up a massive coal deposit in the area's Kaiparowits Plateau while preserving cliffs, slot canyons and sandstone arches ([Greenwire](#), July 13, 2016).

That process prompted Congress to adjust the monument's boundaries in 1998 — excluding

four small towns and adding nearly 400,000 acres of state lands acquired in an exchange with Utah, while handing over about 145,000 acres to Utah state officials, including lands now within the Kodachrome Basin State Park.

Congressional lawmakers also paid \$50 million to Utah in the exchange negotiated by then-Interior Secretary Bruce Babbitt and Utah Gov. Mike Leavitt (R), who would later serve as U.S. EPA administrator.

"A lot of water has already gone under the bridge with Grand Staircase-Escalante," said Earthjustice attorney Heidi McIntosh. She said the land exchange and payment made to Utah's state government would create an "enormous complication" in any effort to undo the site's current status.

"How do you unwind all of that as you attempt to roll back the Grand Staircase-Escalante National Monument?" she said.

McIntosh disagrees with the assertion that Trump could utilize the Antiquities Act to revoke any monument's status — something no commander-in-chief has attempted in the law's 110-year history, but that Republicans like House Natural Resources Chairman Rob Bishop (R-Utah) argue could be done. She asserted that the boundary adjustments approved by Congress could further confound any effort to do so for Grand Staircase-Escalante.

"It seems like it would be really impossible for them to do that legally," McIntosh said, noting that Congress approved the monument's boundaries and has subsequently ratified the site by funding the Bureau of Land Management's management plan.

She added: "The president has no authority to amend an act of Congress."

A White House spokeswoman declined to discuss whether Trump has the authority to alter a monument previously amended by Congress, directing all inquiries to the Interior Department.

University of Colorado Natural Resources Law Center Director Mark Squillace, who has studied the Antiquities Act, echoed that argument.

"Congress has weighed in," Squillace said, noting that the 1998 boundary adjustments actually added some acreage to the site. "I do think it's going to be more challenging."

He added: "It's hard for me to see a significant boundary adjustment that would come through on Grand Staircase. ... It's been done already, and there's not much more to do."

Utah deal

Given that nearly two decades have passed since land exchanges related to the Utah monument's designation were executed, several legal observers agreed that any changes to the monument's status or boundaries would not trigger any mandatory reversal of those

deals.

Moreover, the Utah School and Institutional Trust Lands Administration — the state agency whose lands were exchanged in the negotiations over the Grand Staircase-Escalante boundaries — has voiced no desire to give up the property it gained in the transaction.

"The exchange that was negotiated in 1998 was fully and fairly negotiated, and I don't see that we would try to trade back into it," John Andrews, Utah SITLA's associate director and chief legal counsel, told E&E News last week.

He added of the lands the state gained in Carbon and Emery counties, which include oil, gas and coal production: "The land exchange that was completed in 1998 has ... had a great result for the school trust."

According to an account summary provided by Andrews, those lands have produced nearly \$341 million for the state as of late April.

Since 2007, when the state began issuing proceeds generated from fossil fuel leases, rents and royalties on those lands directly to counties, Emery County has received nearly \$25 million, and Carbon County has received more than \$17 million. Other top beneficiaries include Kane and Sevier counties, which received nearly \$8 million each, and San Juan County, which has received \$2.4 million.

The state owns the profitable land thanks to the monument designation and ensuing swap, McIntosh noted. She suggested that should Congress or Trump dismantle Grand Staircase-Escalante, leaving those benefits in place could amount to an "an incredible act of banditry."

"The legal term for that is unjust enrichment," she said.

'Congress has done nothing'

Despite that 1998 agreement — and the benefit it has created for the state's school fund — resentment over the monument lingered into the administration of President George W. Bush and prompted then-Interior Secretary Gale Norton to conduct her own inquiry of monuments created by the previous administration.

"I certainly disapprove of the process by which those monuments were generally created," Norton told the *Los Angeles Times* in 2001, a few weeks before she issued a letter to governors, state and congressional lawmakers and local officials opening a review of designations issued in the final years of Clinton's presidency.

"The Interior Department is also dedicated to listening to all people to develop real results, instead of focusing on conflict and divisiveness," Norton said in a statement issued at that time. She had earlier told the *Los Angeles Times*, however, that she would not seek to repeal any of the sites.

Similarly, then-House Resources Chairman James Hansen (R-Utah) urged his congressional colleagues to introduce legislation opposing any monuments they objected to within their own states.

But ultimately, opponents of the Antiquities Act backed away from pursuing major changes to the law that has resulted in the creation of more than 150 national monuments — many of which have been converted into national parks, and less than a dozen of which have been eradicated by Congress.

Conservationists point to that lack of action over a 20-year period to suggest that Interior Secretary Ryan Zinke's current review of monuments could ultimately result in the same lack of changes that Norton's review did in the early 2000s.

"It's been quite a long time and Congress has done nothing. ... It would be an incredibly delayed reaction to this designation that's been working in southern Utah," said Kristen Brengel, vice president of government affairs at the National Parks Conservation Association. She pointed to continued grazing in the monument as well as off-highway vehicle use. "Access is certainly robust in the monument."

Brengel suggested that the continued push by Utah lawmakers, including Sen. Orrin Hatch (R), whom Trump credited with pressuring him to sign last week's executive order, is the result of an "anti-federal" stance.

"It's not to protect access," Brengel said. "It's a fact that many politicians in Utah don't like the federal government and don't want the federal government to continue to control its land."

Still, she said she remains hopeful about the monument's survival given that the Trump administration did not attempt to immediately rescind its status.

"It says a lot that they're doing the review and didn't do a revocation of anything," she said. "I think they're dipping their toe in the water, and I think they're going to find the public doesn't like it."

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